401 Water Quality Certifications

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Central Coast Regional Water Quality Control Board

Topics for Today

- Water Board Jurisdiction
- The Application Process
- Common Application Deficiencies
- Successful Mitigation Examples
- Takeaways

A Little History

- Serious water quality issues arise in the 1950s and 1960s

Regulatory Authority

- California passes the Porter-Cologne Water Quality Control Act
- U.S. Congress passes the Clean Water Act

Certification

- Certifying that a project complies with water quality standards
  - Designated Beneficial Uses
  - Water Quality Objectives
  - Anti-Degradation Policy
  - No Net Loss Policy for Wetlands

401 Water Quality Certifications

- Projects that impact waters of the U.S.
- Section 404 of the Clean Water Act
  - Triggers the need to obtain a Section 401 Water Quality Certification for dredge and fill activities
- Section 401 of the Clean Water Act
  - Once triggered, additional waters (waters of the State) may become a consideration in the Certification decision

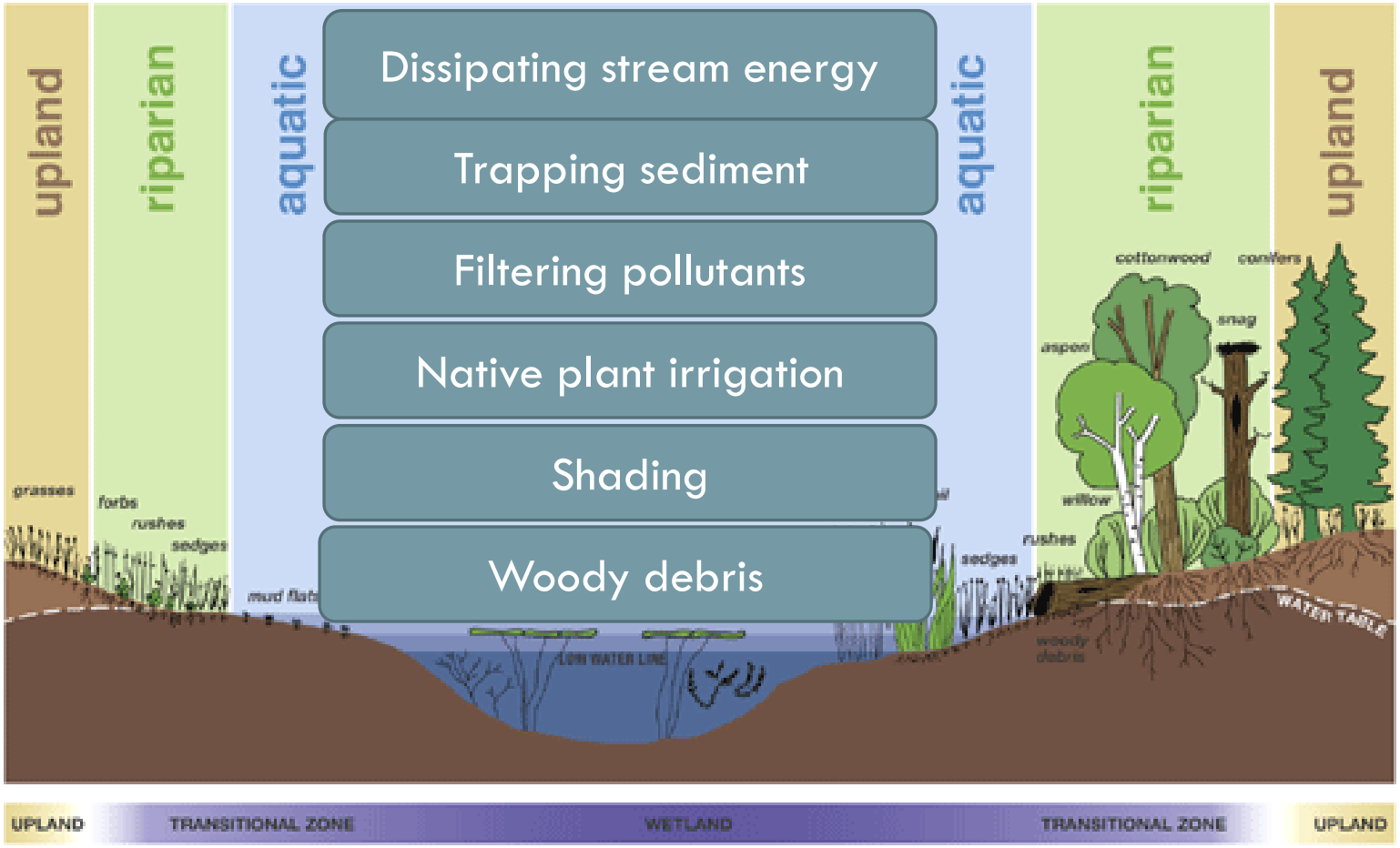
Water Board Jurisdiction

- Authority to consider all potential water quality impacts of the project
- Regulates the entire project – we are certifying that the project complies with water quality standards
- Considerations can be quite broad as long as they relate to water quality

From a Watershed-Based Perspective

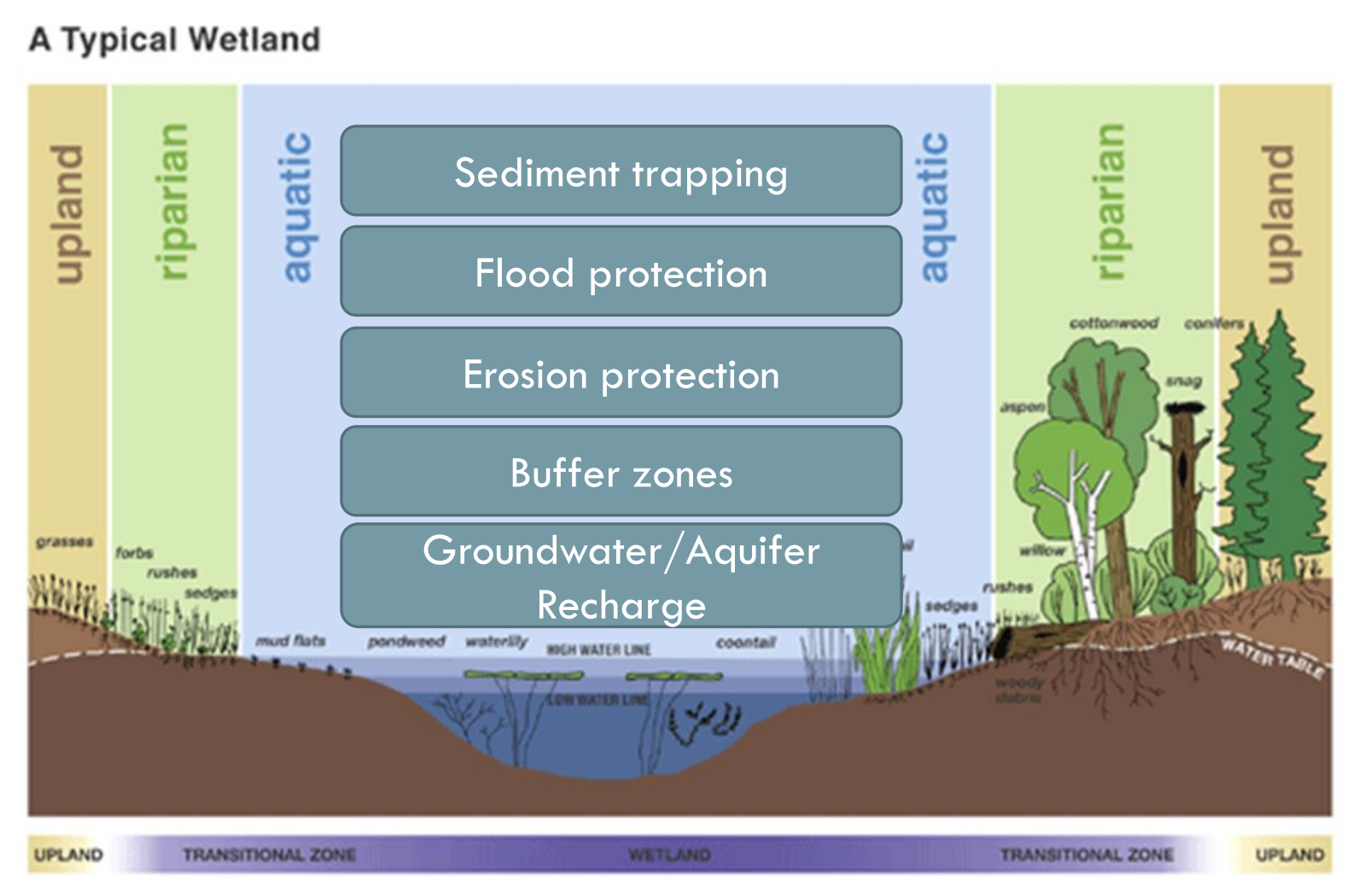
Courtesy of wi.water.usgs.gov

Riparian Habitat



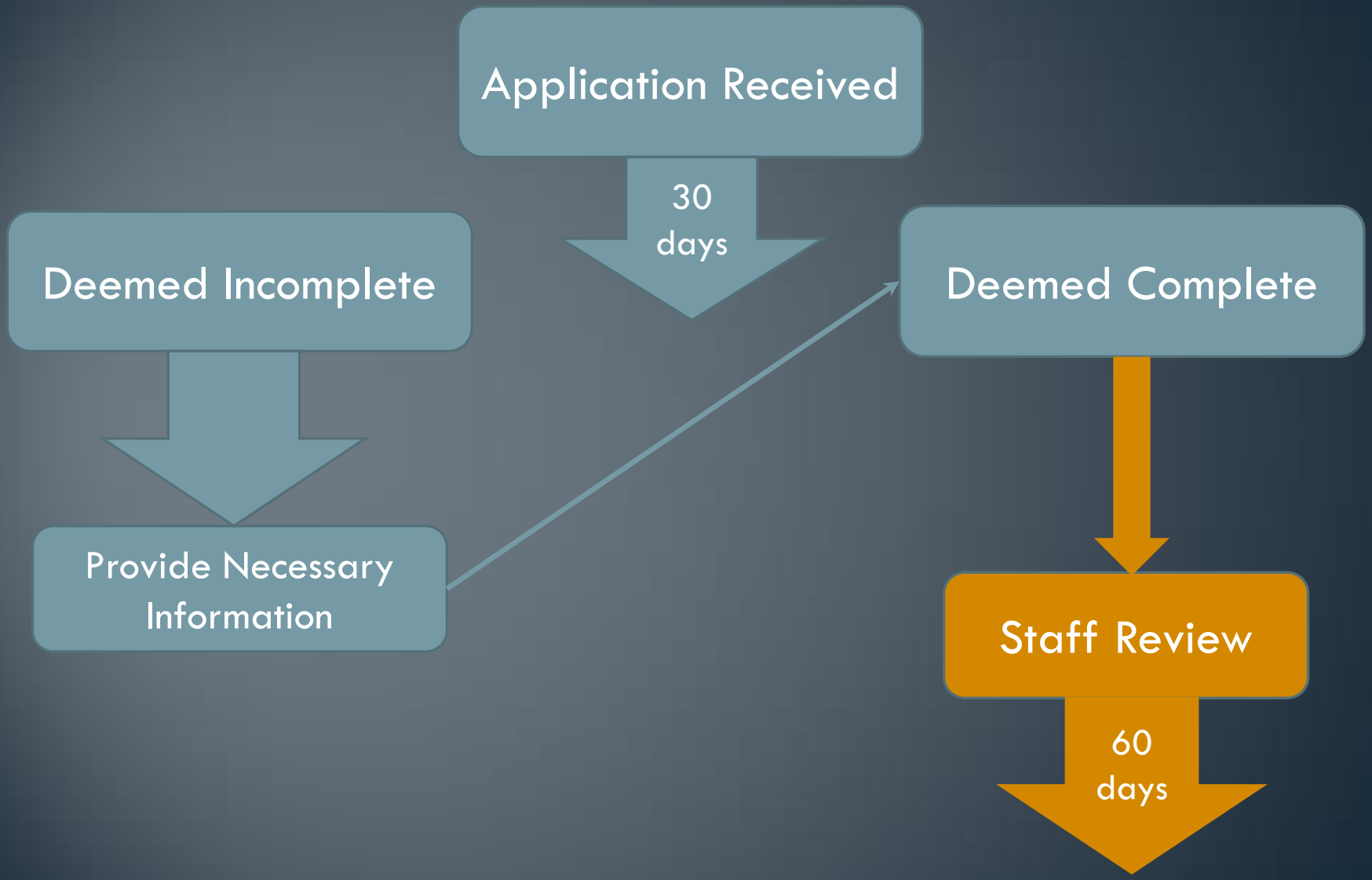
Courtesy of microbewiki.kenyon.edu

Wetland Habitat



Courtesy of microbewiki.kenyon.edu

401 Application Process



Request for Supplemental Information

Staff Determination

Proposed project is protective of water quality

Issue 401 Certification

Proposed project is not protective of water quality

Issue Technically Conditioned 401 Certification

-or-

Denial

Common Application Deficiencies

Complete Project Description

- **Impacts** stated by water body type, e.g., streambed, riparian, wetland (in acres and linear feet)
- Total **project size** (in acres and linear feet)
- Description of **project activities** is vague or incomplete
- Description of **avoidance, minimization, and mitigation** for the loss or significant adverse impacts to waters of the State

Complete Impacts Reporting

- **Impacts to all water bodies** (above and below the Ordinary High Water Mark)
- **Riparian impacts** are considered impacts to waters of the State
- **Non-jurisdictional wetland impacts** are considered impacts to waters of the State

Compensatory Mitigation Proposal

- Compensatory mitigation almost always requires the preparation and submission of a final **Mitigation and Monitoring Plan**
- Compensatory mitigation should **align with reported impacts** (e.g., in-kind)
- Compensatory mitigation should be **reported by type** (e.g., creation, restoration, enhancement, etc.)

Types of Compensatory Mitigation

- **Creation**: Results in a gain of aquatic resource area and function (+/+)
- **Re-establishment**: Results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions (+/+)

Types of Compensatory Mitigation

- **Rehabilitation**: Results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area (0/+)
- **Enhancement**: Results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area (0/+)

Types of Compensatory Mitigation

- **Preservation**: Does not result in a gain of aquatic resource area or functions (0/0)

Compensatory Mitigation Ratios

- Every project is unique
- Condition of the impacted water body
- Type of water body
- Onsite versus onsite mitigation
- Type of mitigation

Common Application Deficiencies

- **Copies of Other Permit Applications**
  - Need to review the entire project
- **CEQA Compliance Documentation**
  - Need final CEQA documentation prior to issuing a Certification
- **Applicant and Agent Contact Information**
  - The applicant or the agent can sign the application

Mitigation and Monitoring Plans – Common Deficiencies

- Impacts and Compensatory Mitigation Don't Align
- Insufficient Justification for Site Selection
- Avoidance and Minimization Efforts Not Addressed
- Low Success Criteria Levels
- Maintenance and Preservation of Mitigation Site Not Addressed
- Inadequate Monitoring and Reporting Requirements
- Inadequate Photo Documentation of pre-Project Site Conditions

Annual Monitoring Reports – Common Deficiencies

- Project Site
  - Adequate Description of Project Activities (actual impacts)
  - Before and After Photo Documentation
  - Corrective Actions Taken
  - Late Submissions
- Mitigation Site
  - Reporting of Actual Impacts and Compensatory Mitigation Implementation (in acres and linear feet)
  - Before and After Photo Documentation
  - Corrective Actions To Be Taken (if necessary)
  - Late Submissions

Successful Mitigation Examples

Picachio Road Bridge Replacement

2008

2014

Las Pilitas Rd Salinas River Bridge

Streambed

New Bridge

Target Shopping Center - Bioswale

Takeaways …

- Impacting a water body is a privilege, not a right
- A complete application makes the process go more smoothly and quickly
- Consistency within project documents is important
- Timely responses move the process forward

And More Takeaways …

- Applicant must demonstrate they have avoided, minimized, and mitigated the impacts of the project
- Accurately stated impacts and appropriate compensatory mitigation that offsets those impacts is key
- "No Net Loss" objectives must be met for every project

Thank You – Questions?

Resources

Contact Information

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Helpful Links

- Central Coast Water Board 401 Water Quality Certification web page:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/401wqcert/index.shtml

- Central Coast Water Board Basin Plan

http://www.swrcb.ca.gov/rwqcb3/publications_forms/publications/basin_plan/docs/basin_plan_2011.pdf

Types of Compensatory Mitigation

- Establishment (or Creation)
  - The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at the site. Establishment results in a gain of aquatic resource area and function. (+/+)
- Re-establishment
  - The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Reestablishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions. (+/+)

Aquatic Resource Area/Aquatic Resource Function
e.g. +/+ = Gain in Aquatic Resource Area/Gain in Aquatic Resource Function

Types of Compensatory Mitigation

- Rehabilitation
  - The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area. (0/+)
- Enhancement
  - The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area (0/+)

Aquatic Resource Area/Aquatic Resource Function
e.g. +/+ = Gain in Aquatic Resource Area/Gain in Aquatic Resource Function

Types of Compensatory Mitigation

- Preservation
  - The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions. (0/0)

Aquatic Resource Area/Aquatic Resource Function
e.g. +/+ = Gain in Aquatic Resource Area/Gain in Aquatic Resource Function

Mitigation and Monitoring Plans - Content

- Introduction
  - Project Location and Description
  - Mitigation Project Purpose
  - Responsible Parties
- Environmental Setting
  - Impacted Areas
  - Mitigation Site

Mitigation and Monitoring Plans - Content

- Sensitive Biological Resources
- Required Permits
- Mitigation Goals and Objectives
- Site Selection and Justification
- Mitigation Work Plan

Mitigation and Monitoring Plans - Contents

- Performance Standards
- Monitoring and Reporting
- Adaptive Management
- References
- Figures and Tables
- Photographs

Annual Monitoring Reports (Mitigation Site) - Contents

- Introduction
- Project Summary
- Compensatory Mitigation Site Information
- Summary of Restoration Activities
- Discussion of Mitigation Site Status
- Corrective Actions
- Conclusion
- Photo Documentation (Before and After)
- Location Figures

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